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2 Honorable David G. Estudillo  
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**UNITED STATES DISTRICT COURT  
IN AND FOR THE WESTERN DISTRICT OF WASHINGTON**

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10 NATHEN BARTON, ) Case No. 3:21-cv-05610-DGE  
11 Plaintiff, )  
12 vs. ) MOTION TO (1) STRIKE PLAINTIFF'S  
13 JOE DELFGAUW, XANADU ) "MOTION TO DISMISS  
14 MARKETING INC., STARTER HOME ) COUNTERCLAIMS FILED IN  
15 INVESTING INC., & JOHN DOE 1-10 ) WASHNGTION STATE COURT" (DKT  
16 Defendants. ) 456)AND (2) FOR SANCTIONS AND  
17 ) (3)GENERAL RESPONSE TO  
18 ) PLAINTIFF'S MOTION TO DISMISS  
19 ) NOTED FOR FEB 27, 2025  
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COME NOW THE defendant s JOE DELFGAUW, XANADU MARKETING INC., STARTER  
HOME INVESTING INC., by and through their undersigned attorney of record and move this court  
for an order striking the Motion filed at Dkt 456 and for sanctions for filing a frivolous motion.  
This motion is based on the concurrently filed declaration of Donna Gibson and the records and files  
herein.

Dated: February 6, 2025

s/Donna Gibson  
Donna Gibson, WSBA #33583  
Attorney for Defendants/Counterclaimants  
JOE DELFGAUW, STARTER HOME  
INVESTING, INC. and XANADU MARKETING INC  
Law Office of Donna Beasley Gibson  
314 Pine Street, Suite 206

MOTION TO STRIKE, FOR SANCTIONS AND GENERAL  
RESPONSE 1  
3:21-cv-05610-DGE -1

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**MOTION TO STRIKE PLAINTIFF'S MOTION TO DISMISS COUNTERCLAIMS FILED  
 IN STATE COURT AND FOR SANCTIONS**

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6 **This Motion is Noted Untimely and in Violation of the Civil Rule 7(d)**

7 Plaintiff Barton noted this and titled this as a motion to dismiss. He has filed numerous  
 8 motions to dismiss in this case and other cases he has filed in federal court. Civil Rule 7(d) clearly  
 9 states that motions to dismiss are to be noted as 28 day motions. He filed this motion on January 16,  
 10 2025 and noted it for February 7, 2025 (which is 22 days from the date it was filed). According to the  
 11 docket, it is noted for February 7, 2025. According to the face of the motion, it is noted for  
 12 10/21/2024. *See Dkt. 456.* Neither the court nor Mr. Barton changed the noting date of this motion,  
 13 despite it being a motion to dismiss. Regardless, it is not noted properly and should be stricken for  
 14 that reason.

16 Barton has filed motions to dismiss in this court before and knows what the deadlines are.  
 17 For example, On 10/8/21 at Dkt 24, Barton wrongfully noted a motion to dismiss. On 11/09/21 at  
 18 Dkt 44 he filed a motion to dismiss. On 11/22/21 he filed a motion to dismiss at Dkt 47.

20 **This Court Lacks Jurisdiction to Hear this Motion**

21 Barton has noted in federal court a motion to dismiss claims filed in State Court. Mr. Barton  
 22 brought a lawsuit against Mr. Delfgauw for the same conduct and actions sued for in the instant case  
 23 pending in federal court. HE now files a motion in federal court to dismiss claims brought in state  
 24 court – for an action filed against Delfgauw in state court in which Delfgauw brought claims in state  
 25 court. The merit and / or dismissal of any claims in state court should be addressed in state court and  
 26 not federal court.

Once again Barton is not only grasping at straws, he is conflagrating the law and the issues. If counsel is reading his motion correctly, he is asking the federal court to dismiss claims in a state court matter. Federal court has no jurisdiction over the claims in state court. Federal courts have limited jurisdiction<sup>1</sup>. They can only hear cases involving disputes between residents of different states, questions of federal law, or federal crimes. U.S. Const. art. III, § 2, cl. 1. If Barton is asking federal court to dismiss federal claims because they were brought in state court, the claims in federal court were brought first (if any of them still remain) and Barton filed his state court case knowing the claims were the same as federal court – or similar, or connected—and though the undersigned counsel does not represent the defendants in the state court case, the state court case should be dismissed. But that issue is not before this court. Thus, the confusion and waste of time and resources once again faces defendants and this court. At some point, this court need to put a stop to Barton and his legal smoke and mirrors.

If Barton's response is that he was confused – then strike the motion. If Barton's response is that he is a mere pro se and didn't know any better, the court should not buy that argument either. He has filed over 50 lawsuits in state and federal court and should know what he is doing by now. Further, "While a pro se litigant is to be spared 'the harsh application of technical rules' he has no greater rights than any other litigant, and is not excused from the procedural requirements impose on all civil litigants. *McNeil v. United States*, 508 U.S. 106, 113, 113 S.Ct. 1980 (1993). Even further, Barton has had motions dismissed for being frivolous before, and had them stricken before for not being noted properly,

Again, as this motion was not noted properly and the court has no jurisdiction to hear it, defendants do not believe the motion merits any further response.

1           **The Court Should Impose Sanctions For Filing A Frivolous Motion**

2           Defendants request that this court impose sanctions on Mr. Barton. Not only did he not file  
3 the rules on noting the motion, he filed it the wrong court and has wasted time and resources. *See*  
4 Declaration of Donna Gibson.

5           s/Donna Gibson  
6           Donna Gibson, WSBA #33583

7           Attorney for Defendants/Counterclaimants  
8           JOE DELFGAUW, STARTER HOME  
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